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## **South Florida Water Management District**

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### **GOVERNING BOARD MEETING MINUTES**

May 13, 2010

9:00 AM

John F. Armstrong Wing at the Blake Library  
2351 SE Monterey Road  
Stuart, Florida 34996-3331

**Members Present:**

**Sandy Batchelor**

**Eric Buermann, Chair**

**Joe Collins**

**Charles Dauray**

**Shannon Estenoz**

**Jerry Montgomery**

**Kevin Powers**

**Patrick Rooney**

**Glenn Waldman**

**1. Call to Order** - Eric Buermann, Chairman, Governing Board

Chair Buermann called the meeting to order at 9:03 a.m.

**2. Pledge of Allegiance** - Eric Buermann, Chairman, Governing Board

Kevin Powers led the group in the Pledge of Allegiance.

**3. Local Governmental Officials** - Introduction by Kevin Powers, Governing Board Member representing St. Lucie, Martin, Palm Beach, Broward, Miami-Dade and Monroe Counties

Kevin Powers welcomed everyone to the Board meeting and thanked Martin County and the Blake Library for hosting the meeting. Mr. Powers also thanked staff for their hard work in coordinating the away meetings. Mr. Powers introduced the local officials.

Doug Smith, Chairman, Martin County Commissioner, presented information on the Southeast Florida Area Contingency Plan relating to oil spills. Commissioner Smith then presented photos of the St. Lucie Estuary after discharges from Lake Okeechobee and what Martin County has accomplished to protect its waterways. He said the Herbert Hoover Dike, C-44 and C-43 projects need to be completed in order to minimize the discharges into the estuaries.

Ms. Wehle praised Martin County for partnering with the District.

Mayor Robert Benton, City of Ft. Pierce, presented information on the Moore's Creek Linear Park Project.

Charles Grande, St. Lucie County Commissioner, commented on the U.S. Sugar purchase, the inland port, and said getting the water clean north of Lake Okeechobee is the goal.

Thomas Bausch, Town of Sewall's Point, thanked the District for shared funding for projects completed in the Town of Sewall's Point. He commented on the concerns from his constituents on the Lake discharges into the estuaries.

Mayor Patricia Christiansen, City of Port St. Lucie, thanked the District for their partnerships with the City of Port St. Lucie. She also supports Consent Agenda Item 30 and the importance of the Howard Creek Stormwater Quality Retrofit Project.

**4. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services**

Annette Carter, Director, Office of Governing Board & Executive Services read into the record:

Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer. Based upon that authority, the Chairman has determined that good cause exists to make certain changes to the Agenda. These changes are being made in order to permit the Governing Board to efficiently accomplish necessary public business at this meeting and to reflect the items on the agenda that have been requested or suggested to be deleted, revised, supplemented or postponed. These changes have been listed in the Governing Board Addendum available at the entrance to this meeting room.

**5. Abstentions by Board Members from items on the Agenda**

Sandy Batchelor announced a disclosure on Consent Agenda Item 18. The Batchelor Foundation of which she is Chairman and Co-CEO, is a donor to the University of Florida College of Veterinary Medicine.

Joe Collins abstained from Consent Agenda Item 12.

**6. Water Resource Advisory Commission (WRAC) Report - Shannon Estenoz, Chair**

Patrick Hayes, WRAC member and Martin County Commissioner, reported on the WRAC meeting which was held in West Palm Beach on May 6, 2010. Issues discussed were Lake discharges to the estuaries, the oil spill response coordinated through the State Emergency Operations Center, coordination of rock mining permit review, status of dispersed water storage efforts, the Strategic Plan update, and Adaptive Protocols for Lake Okeechobee Regulation Schedule, 2008 (LORS).

Ms. Estenoz reported on the 2010 legislative session wrap-up that was presented to WRAC by Ernie Barnett, Director of Legislative Affairs.

Ms. Estenoz also provided WRAC's clarification regarding the Adaptive Protocols process and the decision matrix which will be provided to the Board. She reported there are policy issues that have emerged from these discussions.

**Consent Agenda**

## **7. Public Comment on Consent Agenda**

Public Comment: Rosa Durando, ASE, questioned the Strategic Plan and the Long Term Plan. She said she doesn't believe there are water quality improvement goals.

Public Comment: Alexandria Larsen, citizen, had concerns with Consent Agenda Item 27, rulemaking for water well delegation and Consent Agenda Item 17, revocable Right of Entry to FP&L for withdrawal of water from the L-8 Reservoir Project.

Ken Ammon, Deputy Executive Director, Everglades Restoration and Capital Projects, explained background information on the rock mining pits, FP&L water withdrawals and the reduction of chlorides in the area.

Terrie Bates, Assistant Deputy Executive Director, Regulatory & Public Affairs, also provided an explanation on the well construction permits for Consent Agenda Item 27.

Public Comment: Charles Lee, Audubon of Florida, thanked staff who met with Audubon regarding their objections to Consent Agenda Item 12. He commented on the minimal application fee for reservation release and requested the Board look at the policy for these reservation releases due to the District's revenue-challenged environment.

Ms. Wehle recommended Release of Reservations be discussed at a Project and Lands Committee Meeting and Workshop.

Public Comment: Drew Martin, Sierra Club, has concerns about the L-8 reservoir and said it is not working and said this issue needs to be revisited.

Public Comment: Sharon Waite, citizen, had concerns on Consent Agenda Item 17 and requested time to read the rule for Consent Agenda Item 27.

Ms. Estenoz pulled Consent Agenda Item 27 in order for the public to have time to read the rule.

## **8. Pull Items for Discussion from Consent Agenda**

Ms. Estenoz pulled Consent Agenda Item 27 for discussion.

## **9. Board Comment on Consent Agenda**

Ms. Estenoz commented on Consent Agenda Item 28 (cooperative agreement with the Town of Southwest Ranches) and recognized Charles Linn, Jim Harvey, Freddy Fisikelli and Senator Nan Rich for their efforts on this issue.

## **Regulatory Matters**

**10. Denials**

Consent Agreements

Conservation Easement Amendments and Releases

Page 4 No 1 Osprey Sound (FWD Denial): **Postponed**

Page 5 No 1 Belantica Gardens FKA Atlantica Apartments (ERP Denial):  
**Postponed**

Page 5 No 2 Pinecrest Homes (ERP Denial): **Postponed**

Page 6 No 1 Hamilton Place (Consent Agreement): **Postponed** to June Board

**11. Right of Way Occupancy New Permits**

Right of Way Occupancy Permit Modifications

Right of Way Permit Requests With Waiver of District Criteria

Concurrence with Executive Directors Emergency Authorizations

**Everglades Restoration and Capital Projects**

- 12. 2010-500** A Resolution of the Governing Board of the South Florida Water Management District approving recommendation to the Trustees of the Internal Improvement Trust Fund to release a canal reservation, containing 836.83 acres, more or less, being a portion of Sections 11 and 12, Township 42 South, Range 31 East; Sections 4 and 9, Township 42 South, Range 32 East; and Section 33, Township 41 South, Range 32 East, Glades County, Florida; providing an effective date. (Marcy Zehnder, ext. 6694)

Joe Collins abstained from voting on Consent Agenda Item 12.

- 13. 2010-501** A Resolution of the Governing Board of the South Florida Water Management District approving release of a canal reservation, containing 3.47 acres, more or less, Lots 1 through 24 inclusive, Block 1, and the 10 foot wide alley in Block 1, Florida City Highlands, Plat Book 20, Page 36, Section 26, Township 57 South, Range 38 East, Miami-Dade County, Florida; providing an effective date. (Marcy Zehnder, ext. 6694)

- 14. 2010-502** A Resolution of the Governing Board of the South Florida Water Management District authorizing the Executive Director, or her designee to take appropriate action in the casting of District landowner votes in the June 2010 election for the Board of Supervisors of the Pine Tree Water Control District for the purpose of protecting the District's interests; providing an effective date. (Ruth Clements, ext. 6271)

15. **2010-503** A Resolution of the Governing Board of the South Florida Water Management District authorizing the Executive Director, or her designee to take appropriate action in the casting of District landowner votes in the June 2010 election for the Board of Supervisors of the Pal Mar Water Control District and authorization to quit-claim a quarter acre of land within Pal Mar Water Control District to Jayne Bergstrom for the purpose of protecting the District's interests; providing an effective date. (Ruth Clements, ext. 6271)
16. **2010-504** A Resolution of the Governing Board of the South Florida Water Management District authorizing the Executive Director, or her designee to take appropriate action in the casting of South Florida Water Management District landowner votes in the June 2010 election for the Board of Supervisors of the Troup Indiantown Water Control District for the purpose of protecting the District's interests; providing an effective date. (Ruth Clements, ext. 6271)
17. **2010-505** A Resolution of the Governing Board of the South Florida Water Management District authorizing the granting of a Revocable Right of Entry to Florida Power & Light Company for the installation of temporary pump and pipeline for the withdrawal of water from a portion of the L-8 Reservoir Project, in Palm Beach County; providing an effective date. (Bruce Hall, ext. 6541)
18. **2010-506** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 2-year 5-month cooperative agreement with University of Florida Institute of Food and Agricultural Sciences Tropical Research and Education Center for C-111 Spreader Canal Phase 1 Soil, Water, and Groundwater Monitoring for Planned S-18C Water Level Increases and authorize a waiver of competition as an exception to the general standards of competition in the amount of \$239,168, of which dedicated funds (Comprehensive Everglades Restoration Plan Fund) in the amount of \$86,406 are budgeted; and the remainder is subject to Governing Board approval of the FY11-12 budgets; providing an effective date. (Contract Number 4600002096) (Scott Huebner, ext. 2319)

Sandy Batchelor announced a disclosure on Consent Agenda Item 18. The Batchelor Foundation of which she is Chairman and Co-CEO, is a donor to the University of Florida College of Veterinary Medicine.

#### **Executive Office**

19. **2010-507** A Resolution of the Governing Board of the South Florida Water Management District to adopt the updated 10 year Strategic Plan of the District for the purpose of establishing priorities, goals, strategies and milestones; providing an effective date (Mike Smykowski, ext. 6295).
20. **2010-508** A Resolution of the Governing Board of the South Florida Water Management District authorizing the transfer of funds within the District FY2009-2010 budget as shown on the attachment hereto; providing an effective date (Mike Smykowski, ext. 6295)

21. Denial of Motion for Stay Pending Appeal filed by Close Construction, Inc., Close Construction Inc. v. South Florida Water Management District, Case/Order No. 2010-071-FOF-CONT. (Joe Fiala, ext. 6044)

(Back up document entitled, Appellant's Memorandum in Support of Its Motion for Stay Pending Appeal, has been added to record)

22. **2010-509** A Resolution of the Governing Board of the South Florida Water Management District to authorize District staff to file suit to enforce District Statutes and Rules, and to pursue any appropriate damages and remedies, and take all appropriate action, including the authority to settle the matter, subject to the approval of the Executive Director, against the Latt Maxcy Corporation and Mack Farms, Inc., and any other appropriate or necessary parties, in Osceola County Circuit Court or other appropriate forum, regarding the property located at Sections 7, 18, and 19, Township 31 South, Range 32 East; Sections 12 and 13, Township 31 South, Range 31 East, Parcel Control Numbers 183132000000100000, 133131000000200000, and 193132000000100000, Lake Wales, Osceola County, Florida (Property). (Alison Kelly, ext. 2977)
23. **2010-510** A Resolution of the Governing Board of the South Florida Water Management District authorizing a settlement agreement for \$47,500.00, for any and all claims for damages of any nature, including any claims for attorney fees and/or court costs, for which ad valorem funds are budgeted, and granting of an access easement, in settlement of a declaratory relief and inverse condemnation action against the District, styled Earl Beck v. South Florida Water Management District, filed in the 20th Circuit Court for Glades County, Florida, Case No. 08-ca-0151; providing an effective date. (Ed Artau, ext. 6431)
24. Approve Final Order Closing File regarding petition for administrative hearing filed by Highpoint Tower Technology, Inc. on December 9, 2009, regarding Application No. 091013-10 for a two-year permit extension for Bokeelia Harbor Resort. (Doug MacLaughlin, ext. 2153)
25. **2010-511** A Resolution of the Governing Board of the South Florida Water Management District authorizing a Stipulation for Final Judgment for \$426,806 inclusive of all statutory attorneys fees and costs, for which ad valorem funds are budgeted, for a condemnation action involving acquisition of construction rights over fifteen (15) parcels of land within the C-4 Emergency Detention Basin and Gravity Wall Project, styled South Florida Water Management District v. Canal Investment, Inc., et al., filed in the 11th Circuit Court for Miami-Dade County, Florida, Case No. 07-25887-CA-13; providing an effective date. (Keith Williams, ext. 2791)

## **Regulatory and Public Affairs**

- 26.** Enter into a Water Well Delegation Agreement and Second Amendments to Water Well Delegation Agreements with specified governmental entities, as follows:

A) A Water Well Delegation Agreement with the Highlands County Health Department authorizing the Highlands County Health Department to implement the water well regulatory program set forth in Part III of Chapter 373, Florida Statutes, within its jurisdiction, setting forth the scope of the delegation and the responsibilities of the parties;

B) A second amendment to the Water Well Delegation Agreement with the Martin County Health Department to include a provision concerning legal support;

C) A second amendment to the Water Well Delegation Agreement with the Okeechobee County Health Department to include a provision concerning legal support; and,

D) A second amendment to the Water Well Delegation Agreement with the St. Lucie County Health Department to include a provision concerning legal support.

(James Harmon, ext 6777)

- 28. 2010-512** A Resolution of the Governing Board of the South Florida Water Management District to authorize an Amendment to Cooperative Agreement 4600002044 with the Town of Southwest Ranches to add funding for additional flood protection and water quality improvements in the amount of \$205,200 to extend the term by 13 months, from September 3, 2010 to September 30, 2011 and approve a budget transfer of \$180,200 in FY10 (Okeechobee Basin Ad Valorem Funds) from managerial reserves to the Regulatory and Public Affairs resource area and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract No. 4600002044-A01)(Damon Meiers, ext. 6876)
- 30. 2010-514** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a cost share agreement with the City of Port St. Lucie for the Howard Creek Stormwater Quality Retrofit for one year in the amount of \$964,884, for which state appropriations are budgeted for fiscal year 2010; providing an effective date. (Contract No. 4600002098) (Kathryn LaMartina, ext. 3603)
- 31. 2010-515** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a Public Education Partnership for Northern Everglades and Kissimmee Basin with the Live Oak Production Group and authorize a Waiver of Competition as an exception to the general standards of competition, in the amount of \$75,000; and approve a budget transfer of \$40,000 in FY10 (District ad valorem funds) from managerial reserves to the Regulatory and Public Affairs resource area and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Request Form No. 700000000365) (Barbara Ross, ext. 2066)
- 32.** Enter a Final Order Partially Rescinding Water Shortage Order No. 2007-870-DAO-WS for users within the service areas of the City of Lake Worth and the City of Hallandale Beach. (Peter Kwiatkowski, ext. 2547)

33. Enter a Final Order Rescinding Emergency Order No. 2009-098-DAO-WS, which modified Emergency Order No. 2007-109-DAO-WS, and imposed specific water supply related actions concerning the City of Lake Worth's Public Water Supply Facilities. (Peter Kwiatkowski, ext. 2547)
34. Enter into an Operational Agreement with the City of Lake Worth to modify the wellfield operating plan, reduce pumpage from its Surficial aquifer system wellfield, and require the submittal of a safe yield study and installation of an additional monitoring well. (Peter Kwiatkowski, ext. 2547)

### **Corporate Resources**

35. Authorization by the Governing Board of the South Florida Water Management District to designate position number 002197 to Deputy Executive Director, Regulatory and Public Affairs, for the purpose of participation in the Florida Retirement System Senior Management Service Class, with a proposed effective date of June 1, 2010. (Lourdes Ramos, ext. 6370)

### **Operations and Maintenance**

36. **2010-516** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 3 year work order contract with Knight Property Management Services Incorporated, the lowest responsive and responsible bidder, for Slope Mowing Services within the region of the West Palm Beach Field Station, in the amount of \$379,103 for which ad valorem funds of \$32,236 are budgeted; and the remainder is subject to Governing Board approval of the FY11-FY13 budgets; providing an effective date. (Contract Number 4600002113) (Justin Pace, ext. 4189)
37. **2010-517** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 276 day contract with Expert Construction Managers Incorporated, the lowest responsive and responsible bidder, for the S-65D Telemetry Tower Replacement in the amount of \$895,000 for which ad valorem funds of \$283,842 are budgeted and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600002111) (Robin Deaton, ext. 4062)

### **38. Board Vote on Consent Agenda**

Sandy Batchelor announced a disclosure on Consent Agenda Item 18. The Batchelor Foundation of which she is Chairman and Co-CEO, is a donor to the University of Florida College of Veterinary Medicine.

Joe Collins abstained from voting on Consent Agenda Item 12.

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to Approve the following item(s): 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37

Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

## Workshop Agenda

### **39. State of Water Resources**

**A) 1) Water Conditions & Water Supply Report** - Susan Sylvester, Director, Operations Control & Hydro Management Department (ext. 6152)

**2) Adaptive Protocols for Lake Okeechobee Operations Status Update** - Susan Gray, Chief Environmental Scientist, Restoration Sciences Department (ext. 6919)

**3) Water Storage Treatment Status Update** - Benita Whalen, Deputy Director, Environmental Regulation Resource Department (ext. 2957)

**4) Wet Season Public Outreach** - Deena Reppen, Deputy Executive Director, Regulatory & Public Affairs (ext. 6232)

**B) Ecological Conditions Report** - Peter Doering, Chief Environmental Scientist, Restoration Sciences Department (ext. 2772)

**C) US Army Corps of Engineers' Lake Okeechobee Report** - LTC Michael Kinard, Deputy District Commander, South Florida, Jacksonville District, US Army Corps of Engineers

Due to the public concern with the discharges, Mr. Powers requested taking public comment earlier in the meeting. Mr. Powers recommended hearing the water and ecological conditions report plus the USACE's Lake Okeechobee report and then take public comment.

After some discussion, the Governing Board concurred.

Susan Sylvester, Director, Operations Control & Hydro Management Department, presented the water conditions & water supply report. Ms. Sylvester reported on the rainfall from November 2009 through May 2010, Lake discharges into the estuaries, water releases to tide, the U.S. Seasonal Precipitation Outlook, Lake Okeechobee's Stage forecast and the May 2010 Position Analysis.

Peter Doering, Chief Environmental Scientist, Restoration Sciences Department, provided an update on the District's ecological conditions. Dr. Doering reported on Snail Kite nesting, wading bird foraging, and the salinity levels in the Caloosahatchee and St. Lucie estuaries and related effects on the oysters and seagrasses.

Col. Alfred Pantano, Jr., USACE, addressing the public said he is here to listen to the concerns and opinions of the citizens regarding the Lake discharges to the estuaries. He introduced the USACE staff who were in the audience.

Col. Pantano reported on meetings held with concerned citizens regarding the Lake discharges into the estuaries. He addressed the emails he received and said that he has visited the sites of concern and acknowledged what the discharges are doing to the ecosystem, the estuaries and the economy. Expressing his own concern about the ecosystem, Col. Pantano explained Jacksonville USACE's program is about protecting, restoring and enhancing the ecosystem. Col. Pantano said decisions have to be made collaboratively and reported on Lake Okeechobee's water levels, LORS 2008, and the water discharges to the estuaries. Lake Okeechobee's water level is too high and needs to be lowered for the upcoming predicted wetter-than-normal wet season and possible storm events. He also reported on the rehabilitation of the Herbert Hoover Dike and said the rehabilitation efforts will not eliminate discharges into the estuaries. Col. Pantano then reported on the current rate of discharges into the estuaries. He explained his first priority is to protect people and property.

Public Comment: Sarah Heard, Martin County Commissioner, said the USACE has promised to send this polluted water elsewhere and wanted to know what is a reasonable waiting period. Commissioner Heard said the St. Lucie River is a national treasure but the water is toxic from the discharges. She recommends stopping the discharges and finding water storage elsewhere.

Public Comment: Leon Abood, Rivers Coalition, said the economic sustainability of the community depends on the rivers. He opposes the discharges into the estuaries.

Public Comment: Douglas Ashley, citizen, said he'd like to see some recommendations and action taken to preserve the estuaries. He opposes the discharges into the estuaries.

Public Comment: Henry Caimotto, citizen, said a flow way south will help this issue and blames agriculture. He opposes the discharges into the estuaries.

Public Comment: Charles deGarmo, citizen, commented on the District's core mission. He opposes the discharges into the estuaries.

Public Comment: Bob Ernst, citizen, said to stop the discharges now and he requested the Board direct staff to develop emergency rulemaking to require the retention of stormwater with the goal of no discharges into the estuaries.

Public Comment: Karl Wickstrom, Rivers Coalition, stated promises have been broken in the past and opposes the discharges into the estuaries. He said the water needs to be moved south.

Public Comment: Ed Fielding, citizen, said the St. Lucie Estuary doesn't need any Lake water and he opposes discharges to the estuaries. The Board needs to address projects that are harming the ecological of the ecosystem.

Public Comment: R. Grant Gilmore, Estuarine Coastal Oceans Inc., reported on the economic impacts from water releases to the estuaries.

Public Comment: Jim Harter, Rivers Coalition, requested to share the adversity and opposes the discharges to the estuaries.

Public Comment: Jay Honan, citizen, commented on the District's ability to manage water, filing a lawsuit for the protection of the estuary, and opposes the discharges to the estuaries.

Public Comment: George Jones, Indian Riverkeeper, stated the water discharges are a long-standing problem. He said there have been projects that could help. He opposes the discharges to the estuaries and supports projects for clean water.

Public Comment: Bud Jordan, St. Lucie River Initiative, commented on sending water south, storing water north, and opposes the discharges to the estuaries.

Public Comment: Alex Larson, citizen, recommended adding a filtering system north of Lake Okeechobee.

Public Comment: Drew Martin, Sierra Club, recommended not issuing permits to developers and storing water north of the lake.

Public Comment: Mark Perry, Florida Oceanographic Society, opposes the discharges to the estuaries and suggested allowing evapotranspiration (ET) to happen.

Public Comment: Ian Pollack, citizen, commented on the dirty water in the St. Lucie River and opposes the discharges to the estuaries.

Public Comment: Max Quackenbus, citizen, commented that the community has been suffering for over 50 years and recommended broadening the Miami canal south of the Lake and give it a capacity of 4,000 cfs to alleviate the discharges into the estuaries.

Public Comment: A. J. Smith, citizen, opposes the discharges to the estuaries and said diseases are caused by polluted water.

Public Comment: Ben Swann, citizen, said to move the water south, get agriculture out of the area, and opposes the discharges into the estuaries.

Public Comment: Bill Summers, citizen, asked the Board to be sensitive to the problem with the discharges going into the estuaries and to please solve the problem. He opposes these discharges.

Public Comment: Sharon Waite, citizen, commented on the numeric nutrient criteria and cleaning up the water.

Public Comment: Bill Whittaker, citizen, commented on canoeing on the St. Lucie River and said these discharges of dirty water are health issues.

Public Comment: Frank Pryzbylski, citizen, opposes the discharges to the estuaries.

Public Comment: Paul Gray, Audubon of Florida, commented on protecting the watersheds and the increased rain events during the dry season. He said the Herbert Hoover Dike needs to be repaired.

Public Comment: Valerie Jones, citizen, opposes the discharges to the estuaries.

Public Comment: Commissioner Patrick Hayes, Martin County, commented on his involvement with the Loxahatchee River, water discharges into the estuaries, and said the only solution is pressuring elected officials and for the Governor to declare a State of Emergency on this issue. He said this is a State problem.

Public Comment: Commissioner Ray Judah, Lee County, said the estuaries need to be treated equally in regards to urban and agricultural water supply.

Ms. Estenoz thanked the public and elected officials for coming to the meeting and stating their concerns. She expressed her frustration and said the long-term solutions include water quality management, water management north of the Lake, CERP, and most importantly, the infrastructure to move and store water south of the Lake. She said the Board, with the purchase of U.S. Sugar, is trying to make that a reality but explained the opposition the Board has encountered through this process. She expressed her frustration with the legal challenges, and pledged she will not shy away from these problems and she supports what was said today.

Mr. Powers also thanked the public for participating in these discussions on the discharges and said it is a generational problem which needs to be resolved. Mr. Powers also thanked Colonel Pantano for coming to the Board meeting and addressing the concerned citizens.

Mr. Dauray said there are many citizens on the west coast of Florida that have the same concerns about the estuaries and recommended the public vote for the people who are going to reflect their voice for the State of Florida.

Chair Buermann supports his Board members and said everyone has to work together to fix the problems. Chair Buermann explained the funding issues, lack of Congressional money and hopes the citizens understand the difficult decisions the Board must make.

Mr. Powers suggested reviewing projects from the Northern Everglades Plan.

Ms. Wehle said she will bring back to the Board short-term water quality projects for the Northern Everglades Plan.

Susan Gray, Chief Environmental Scientist, Restoration Sciences Department, presented an update on Adaptive Protocols for Lake Okeechobee operations and the outstanding concerns from stakeholders. The decision matrix for the Adaptive Protocols will be brought back to WRAC and the Governing Board in June.

Public Comment: John Fumero, representing Lee County, commented on Lee County's tourism and economic impacts because of the discharges. He expressed concerns for the Caloosahatchee Estuary during the dry season.

Public Comment: Paul Gray, Audubon of Florida, said the Adaptive Protocols Workshop process has been good and the only issue that could not be resolved was no discharges to the Caloosahatchee Estuary during the dry season and possible water shortage. He said there were two options and tradeoffs discussed and suggested both options be presented to the Board.

Ms. Wehle said this issue will continue to be workshopped and brought to WRAC in June.

Public Comment: Kurt Harclerode, Lee County, said the issues team has worked through many of the issues but they are at a point now where there are differences of opinion relating to lake releases in the dry season. He said the Board will be faced with a policy decision regarding the tradeoffs between potential future risk versus mortality to the flora and fauna of the Caloosahatchee Estuary.

Public Comment: Ray Judah, Lee County Commission, recommended a clear policy direction from the Board to staff for environmental releases.

Public Comment: Joan Lawrence, Department of Interior, commented on the Environmental Impact Statement (EIS) and said the LO650 is not within the EIS. There needs to be more water storage and water quality treatment.

Public Comment: Pete Quasius, Audubon, has concerns about the estuary habitat for quality of life and economic well being and also commented on the policy decision the Board will need to make regarding the environmental releases.

Public Comment: Charles Shinn, Florida Farm Bureau Federation, supports the staff-proposed AP5 scenario for the Adaptive Protocols.

Public Comment: RaeAnn Wessel, Sanibel/Captiva Conservation Foundation, wanted assurances that the adjustment to the adaptive protocol is to provide flexibility in the decision matrix.

There was discussion about the decision matrix.

Benita Whalen, Deputy Department Director, Environmental Regulation Resource Department, presented an update on Florida Ranchlands Environmental Services Project (FRESP) and water storage treatment projects and said they are continuing to make progress.

Public Comment: Charles Lee, Audubon of Florida, said dispersed storage, water farming and working with landowners is the most promising effort to store a lot of water quickly in a manner that is both environmentally and landowner friendly.

Public Comment: Charles Shinn, Florida Farm Bureau Federation, commented that farmers are highly supportive of this process but need assurances that farmers won't be penalized for storing water due to the wetlands that may become established, threatened or endangered species that may locate to the fields or possible nutrient reflux.

Note: Wet Season Public Outreach item was deferred.

- 40. C-44 Reservoir and STA Update** - Jeff Kivett, Director, Everglades Engineering Department, Everglades Restoration and Capital Projects (ext. 4018)

This item was deferred.

- 41. Upper East Coast Water Supply Plan Update** - Mark Elsner, Director, Water Supply Development Division, Regulatory and Public Affairs (ext. 6156)

This item was deferred.

## Discussion Agenda

### **Everglades Restoration and Capital Projects**

- 42. 2010-518** A Resolution of the Governing Board of the South Florida Water Management District authorizing a final purchase offer of \$1,746,275 and eminent domain proceedings for the acquisition of certain land interests, consisting of 690.25 acres, more or less, in Osceola County, Florida, which are part of the Kissimmee River Restoration and Headwaters Revitalization Project for which ad valorem (Capital Projects Okeechobee) and dedicated (Florida Forever Trust Fund) funds are budgeted; providing an effective date. (Bob Schaeffer, ext. 2985)

No presentation provided.

Public Comment: Alex Larsen, citizen, requested the Board look at these future land swaps more closely.

Motion made by Shannon Estenoz, seconded by Jerry Montgomery to Approve the following item(s): 42

Vote called. Voting yes: Shannon Estenoz, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

- 43. 2010-519** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the proposed acquisition of land interests containing 690.25 acres for the Kissimmee River Restoration and Headwaters Revitalization Project, in Osceola County, and requesting the release of funds from the Florida Forever Trust Fund for acquisition of such land interests, together with statutory costs and associated costs; providing an effective date. (Bob Schaeffer, ext. 2985)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Jerry Montgomery to Approve the following item(s): 43

Vote called. Voting yes: Shannon Estenoz, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

- 57. 2010-522** A Resolution of the Governing Board of the South Florida Water Management District authorizing entering into a Project Partnership Agreement with the U.S. Department of the Army for construction, operation, maintenance, repair, replacement and rehabilitation of Phase 1 of the Site 1 Impoundment Project (Fran Reich Preserve), a component of the Comprehensive Everglades Restoration Plan, at a total estimated construction cost of \$50,600,000 and an estimated annual operations and maintenance cost of \$218,000 for which the South Florida Water Management District will be responsible for providing a 50 percent cost-share, and for which funding, if any, is subject to Governing Board approval of future fiscal year budgets; providing an effective date. (Contract Number 4600002102) (Paul Warner, ext. 6512)

Paul Warner, Chief Scientist, Everglades Restoration and Capital Improvement, presented information on the project partnership agreement for the Site 1 Impoundment Project, a component of CERP.

Ms. Estenoz congratulated the Project Delivery Team for their efforts on this project.

Col. Pantano thanked those involved and said there is \$41M of stimulus dollars coming to Florida for projects that are very important.

Motion made by Shannon Estenoz, seconded by Jerry Montgomery to Approve the following item(s): 57

Vote called. Voting yes: Shannon Estenoz, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

## **Regulatory and Public Affairs**

- 27.** Authorize publication of a notice of rule making in the Florida Administrative Weekly (FAW) to amend Rule 40E-3.035, F.A.C., to incorporate by reference: 1) the agreements with the following governmental entities: Lee County and the County Health Departments of Broward, Glades, Highlands, Miami-Dade, Orange, Osceola, Polk, and Palm Beach Counties to delegate the implementation of the Water Well Regulatory Program; 2) to incorporate by reference the first amendment to the delegation agreement with the City of Cape Coral, Collier County, and the County Health Departments of Hendry, Martin, Okeechobee, Osceola, and St. Lucie Counties; and, 3) to incorporate by reference the second amendments to the delegation agreements with the Martin, Okeechobee, and St. Lucie County Health Departments to include a provision concerning legal support. (James Harmon, ext. 6777)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Patrick Rooney to Approve the following item(s): 27

Vote called. Voting yes: Shannon Estenoz, Patrick Rooney, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Glenn Waldman. Motion passed.

- 44. 2010-520** A Resolution of the Governing Board of the South Florida Water Management District supporting the Governor designating May 16-22, 2010 as Water Reuse Week in Florida; providing an effective date. (Mark Elsner, ext. 6156)

Mark Elsner, Director, Water Supply Development Division, reported the Governor has designated May 16 - 22, 2010 as Water Reuse Week.

Public Comment: Alex Larsen, citizen, commented on the costs for numeric nutrient standards and asked the Board to find a balance with the runoff.

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to Approve the following item(s): 44

Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

### **Operations and Maintenance**

- 45. 2010-521** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 3 year contract with two one-year renewal options with DNK Environmental Incorporated, the lowest responsive and responsible bidder, for Datalogger Recorder Maintenance Services at ground water and surface water monitoring sites in the southeast region of the District in the not-to-exceed amount of \$2,800,000 of which ad valorem funds in the amount of \$170,841 are budgeted; and the remainder is subject to Governing Board approval of the FY11-FY13 budgets; providing an effective date. (Contract Number 4600002130) (Garnett Ritchie, ext. 4616)

No presentation provided.

Motion made by Jerry Montgomery, seconded by Glenn Waldman to Approve the following item(s): 45

Vote called. Voting yes: Jerry Montgomery, Glenn Waldman, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Shannon Estenoz, Kevin Powers, Patrick Rooney. Motion passed.

**46. Public Comment**

- Regulatory Policy Issues
- General Public Comment

Public Comment: Max Quakenbus, citizen, reported on the history of past District Governing Boards and said he senses this Board has a genuine capacity to do a great job. He wished them well.

Public Comment: Rosa Durando, citizen, objected to Application 090427-7 Scripps Florida Phase II/Briger permit.

Public Comment: Alex Larsen, citizen, also commented on the Briger permit and said these large permits need to be brought before the Board.

Public Comment: Drew Martin, Sierra Club, also commented on the Briger property and opposes this development.

Ms. Wehle explained the regulatory public meeting process and said there were changes to the staff report to address the public's issues.

Chair Buermann provided an explanation to the new Board members of SB2080 regarding delegation of authority to the Executive Director to approve environmental resource permits and consumptive use permits.

Robert Brown, Director, Environmental Resource Regulation Department, provided additional information pertaining to the Briger permit.

## Staff Reports

### **Executive Office**

**47. Legislative Update - Ernie Barnett**

Ernie Barnett, Director, Legislative Affairs, provided a legislative report for the 2010 Legislative session. Mr. Barnett reported on SB550, HB435, SB318 and SB1516 and the 2010-2011 final budget conference report.

**48. General Counsel Report - Sheryl Wood**

**SFWMD v. Jerjo, Inc., Jerjo Limited, Inc., and Ibis Club at Naples Condominium Association, Inc.:** The Office of Counsel is initiating administrative enforcement proceedings, pursuant to Section 373.119, Florida Statutes, against Jerjo, Inc., related to alleged non-compliance with environmental resource permit conditions for property located in Collier County and otherwise involving permit number 11-01763-P. Jerjo Limited, Inc. owns the off-site mitigation area required in the permit. Office of Counsel is also initiating administrative enforcement proceedings against Ibis Club at Naples Condominium Association, Inc. for operating a surface water management system without the required permit. (Alison Kelly, ext. 2977)

**SFWMD v. Villas at Mandalay Development, LLC and Homeowners Association of Mandalay, Inc.:** The Office of Counsel is initiating administrative enforcement proceedings, pursuant to Section 373.119, Florida Statutes, against the Villas at Mandalay Development, LLC, related to alleged non-compliance with environmental resource permit conditions for property located in Collier County and otherwise involving permit number 11-02292-P, and against the Homeowners Association of Mandalay, Inc., for operating a surface water management system without the required permit. (Alison Kelly, ext. 2977)

No report provided.

**49. Executive Director's Report - Carol Wehle**

- Report on Permits Issued by Authority Delegated to Executive Director from April 1 to April 30, 2010

Ms. Wehle reported on the permits issued by authority delegated to the Executive Director from April 1 to April 30, 2010.

Ms. Wehle recognized Jayne Bergstrom, Director, Martin County Service Center, for her hard work and efforts in coordinating the May Governing Board meeting in Martin County.

Public Comment: Drew Martin, Sierra Club, commented on the permit process and those permits which have controversy. He suggested they be brought back to the Board.

**50. Board Comment**

There was no Board comment.

**Attorney Client Sessions**

**Executive Office**

- 51.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, P. Rooney, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, K. Burns, J. Nutt, F. Bartolone. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Sheryl G. Wood, ext. 6976)

Chair Buermann adjourned the meeting to Attorney Client Session at 2:55 p.m. He reported the meeting would reconvene in approximately 90 minutes.  
Chair Buermann reconvened the meeting at 4:46 p.m.

Sheryl Wood, General Counsel, announced no action be taken at this time for Agenda Item 51.

Adjournment

**56. Adjourn**

Chair Buermann adjourned the meeting at 4:47 p.m.

Motion made by Shannon Estenoz, seconded by Joe Collins to adjourn the meeting. Vote called. Voting yes: Shannon Estenoz, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney, Glenn Waldman. Motion passed.

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Eric Buermann  
Governing Board Chairman  
South Florida Water Management District Governing Board

Recorded By:

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Cathy Widness  
Administrative Assistant Senior  
Governing Board and Executive Services  
SFWMD